IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs March 24, 2009

STATE OF TENNESSEE v. CATHERINE HUECKER

Appeal from the Circuit Court for Sevier County
No. 12197-III Rex Henry Ogle, Judge

No. E2008-00448-CCA-R3-CD - Filed September 15, 2009

Following the Sevier County Circuit Court's denial of her motion to suppress, the defendant, Catherine Huecker, entered guilty pleas to driving under the influence (DUI), simple possession of a schedule II drug, and possession of drug paraphernalia, all Class A misdemeanors, and received an effective sentence of eleven months and twenty-nine days, suspended after the service of five days incarceration. Pursuant to Rule 37(b)(2)(A), the defendant reserved a certified question of law challenging the legality of her detention and the search of her vehicle. Following our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Edward C. Miller, District Public Defender; and Micaela Burnham, Assistant Public Defender, attorneys for appellant, Catherine C. Huecker.

Robert E. Cooper, Jr., Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; James B. Dunn, District Attorney General; and George Ioannides, Assistant District Attorney General, attorneys for appellee, State of Tennessee.

OPINION

The proof at the suppression hearing consisted solely of the testimony of Sevierville Police Officer Graham Ownby who testified that on August 28, 2006, he received a call from dispatch regarding a possible intoxicated driver who had hit a curb on Dolly Parton Parkway. Upon arriving at the area, Officer Ownby discovered a vehicle matching the description parked in a parking lot with a flat tire. The defendant was sitting in the driver's seat of the vehicle. Officer Ownby approached the defendant who told him "that her tire was busted flat." Officer Ownby testified that he immediately noticed the defendant's slurred speech and asked her if she had been drinking. After the defendant initially denied drinking, the officer asked her to step out of the vehicle at which time he noticed that "[s]he was very unsteady on her feet." Officer Ownby stated that once the defendant

extinguished her cigarette, he noted that her breath smelled of "an alcoholic beverage." He administered several field sobriety tests which he testified she either failed or performed poorly. The defendant was then placed under arrest. Officer Ownby recalled that, after failing the field sobriety tests, the defendant admitted to consuming four beers, Benadryl, and hydrocodone. A search of the defendant's vehicle uncovered an open Coors Light beer, hydrocodone in the defendant's purse, and an item identified by Officer Ownby to be a "crack pipe." On cross-examination, Officer Ownby testified that the degree of the defendant's slurred speech appeared, to him, to be more than a southern accent. He also acknowledged that the defendant initially told him that she had called a friend to come pick her up.

Based upon this evidence, the trial court denied the defendant's motion to suppress. Specifically, the trial court found that:

> [Y]ou have an officer here who got a call of a possible DUI offender. Given some description, he drives up Dolly Parton Parkway. He sees a car, as I understand the testimony, generally matching that description. Saw that it had a flat tire and went over and . . . . [h]e inquires of the person. She was stopped. He didn't stop her, she was stopped, so the officer has a right to go up there anyway seeing someone with a flat tire to go over and inquire.
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> When he got there, the officer noted slurred speech. One does not have to know somebody to determine whether or not speech is slurred. People can use their own observations to try to determine that and the officer then, after listening and observing slurred speech, asked her to get out of the car. She smelled of alcohol, etcetera, so the officer put her under arrest and a search followed and all of that.
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> The issue is whether or not the officer had a right to be there, whether this stop was unreasonable. The Court finds that he didn't in fact stop her. Now, whether or not he detained her is another matter, but the law has allowed officers to make preliminary inquiry when they stop a vehicle or pull up on a vehicle for many reasons, but the Court finds that the officer was properly where he was, he observed what he says he observed. And based upon that, he had every reason to ask her to step out of the car wherein he smelled alcohol and so forth.
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> . . . .
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> So for all the foregoing, the Court must respectfully overrule the Motion to Suppress.

The defendant entered guilty pleas and reserved for appeal the certified question of whether the officer had reasonable suspicion to detain the defendant beyond simply questioning her to determine her welfare. On appeal, she asserts that Officer Ownby did not have probable cause to approach her vehicle based upon the anonymous call to dispatch and further that the officer did not have probable cause to ask her to exit her vehicle. The State answers that Officer Ownby acted

reasonably by inquiring of the defendant's safety and that reasonable suspicion based upon the defendant's slurred speech supports the continued detention by the officer which ultimately led to the defendant's arrest. Following our review, we agree with the State.

ANALYSIS

Standard of Review

"[A] trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). Questions about the "credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." Id. Both proof presented at the suppression hearing and proof presented at trial may be considered by an appellate court in deciding the propriety of the trial court's ruling on a motion to suppress. State v. Henning, 975 S.W.2d 290, 299 (Tenn. 1998); State v. Perry, 13 S.W.3d 724, 737 (Tenn. Crim. App. 1999). However, the prevailing party "is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." Odom, 928 S.W.2d at 23. Furthermore, an appellate court's review of the trial court's application of law to the facts is conducted under a de novo standard of review. State v. Walton, 41 S.W.3d 75, 81 (Tenn. 2001) (citations omitted).

Both the federal and state constitutions offer protection from unreasonable searches and seizures. See U.S. Const. amend. IV; Tenn. Const. art. I, § 7. "[T]he most basic constitutional rule in this area is that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions.'" Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971) (quoting Katz v. United States, 389 U.S. 347, 357 (1967)); see also State v. Berrios, 235 S.W.3d 99, 104 (Tenn. 2007). "Exceptions to the warrant requirement include searches incident to arrest, plain view, hot pursuit, exigent circumstances, and others, such as the consent to search." Berrios, 235 S.W.3d at 104 (citing State v. Cox, 171 S.W.3d 174, 179 (Tenn. 2005)). Fourth Amendment concerns attach to "all seizures of the person, including seizures that involve only a brief detention short of traditional arrest." United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975) (citation omitted); see Terry v. Ohio, 392 U.S. 1, 16-19 (1968).

We initially note that, contrary to the defendant's argument on appeal, an officer – without either reasonable suspicion or probable cause – may approach a vehicle for the purpose of assessing the safety or welfare of a stopped vehicle's occupants. See, e.g., State v. Hawkins, 969 S.W.2d 936 (Tenn. Crim. App. 1997). This "community caretaking function" allows the police to "engage a citizen and ask questions as long as the citizen is willing to carry on the conversation." Hawkins, 969 S.W.2d at 939 (citing State v. Butler, 795 S.W.2d 680, 685 (Tenn. Crim. App. 1990)). Further questioning in the form of an investigatory stop may occur only "when the officer has a reasonable suspicion, supported by specific and articulable facts, that a criminal offense has been or is about to be committed." State v. Bridges, 963 S.W.2d 487, 492 (Tenn. 1997) (citations omitted); see also Terry, 392 U.S. at 21. Our supreme court has noted,

> In determining whether a police officer's reasonable suspicion is supported by specific and articulable facts, a court must consider the totality of the circumstances. United States v. Cortez, 449 U.S. 411, 417, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621, 629 (1981). This includes, but is not limited to, objective observations, information obtained from other police officers or agencies, information obtained from citizens, and the pattern of operation of certain offenders. Id., 449 U.S. at 418, 101 S. Ct. at 695, 66 L. Ed. 2d at 629. A court must also consider the rational inferences and deductions that a trained police officer may draw from the facts and circumstances known to him. Terry, 392 U.S. at 21, 88 S. Ct. at 1880, 20 L. Ed. 2d at 906.

State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992). Any further detention in the form of an arrest may occur only in the presence of probable cause. Hawkins, 969 S.W.2d at 938.

The evidence presented at the suppression hearing shows that the officer approached the defendant's vehicle based upon the vehicle matching a description of a reported drunk driver and the flat tire. Even assuming the officer had not received a call from dispatch, he would have been justified in approaching the defendant's vehicle to inquire of her safety or welfare in light of the flat tire. After engaging in an inquiry into the defendant's welfare, the officer noted slurred speech, giving rise to reasonable suspicion that the defendant was driving under the influence. Further investigation led to the detection of the smell of alcohol and the defendant's failing of the field sobriety tests, providing probable cause to support the defendant's ultimate arrest for DUI. We conclude that the evidence does not preponderate against the trial court's findings. Accordingly, we affirm the trial court's denial of the motion to suppress.

CONCLUSION

Based upon the foregoing, the judgment of the trial court is affirmed.

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D. KELLY THOMAS, JR., JUDGE